

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**FRANCISCO ABELLAN VILLENA,
GUILLERMO CIUPIAK, JAMES B.
PANTHER, JR., and
FAIYAZ DEAN**

Defendants.

Civil Action No. 18-cv-4309 (PKC)

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S STATUS REPORT

Plaintiff Securities and Exchange Commission ("SEC") respectfully submits this Status Report in compliance with this Court's Order dated March 31, 2023. (ECF No. 109). At this time, the SEC's case remains unresolved against two defendants: James B. Panther, Jr. ("Panther") and Guillermo Ciupiak ("Ciupiak"). The status of the litigation against Panther and Ciupiak and the steps the SEC intends to take to resolve its case are set forth below.

I. Panther

The SEC no longer expects to achieve a "bifurcated" settlement with Panther whereby he would consent to judgment on liability issues and reserve issues as to monetary remedies until after completion of the Department of Justice's ("DOJ") parallel criminal action against him, *U.S. v. Panther*, No. 19-cr-448, (D. Ariz.). Panther previously informed the Court that he was optimistic as to settlement (ECF No. 106), and we repeatedly pressed his counsel to transmit an executed version of the settlement agreement. However, counsel was unable to do so. We can only infer from the fact that counsel subsequently withdrew from this case (ECF No. 107)—and that no replacement counsel has appeared—that Panther decided not to pursue settlement. Our

contingency plan had been to move for partial summary judgment on liability issues based on Panther's guilty plea in the criminal action. However, we had expected to be able to rely on an actual final judgment in that action. Unfortunately, final judgment still has not been entered in the criminal action. No final determination has been made as to forfeiture, restitution or any term of imprisonment. Under the circumstances, our current plan is to submit a *fully dispositive* motion upon completion of the criminal action. Not only will there be no genuine dispute as to Panther's liability at that point, based on the preclusive effect of a final judgment in the criminal action, the SEC also will be able to make an informed determination as to what its specific demand should be regarding any civil penalty, in light of the criminal penalties that are imposed. Regarding the status of the criminal action, we are informed that a hearing on Panther's sentencing is currently scheduled for May 22, 2023.

II. Ciupiak

The SEC and Ciupiak entered into a bifurcated settlement, (ECF No. 45), which resolved Ciupiak's liability but deferred the issues of disgorgement and any civil penalty for later determination. As with Panther, however, any restitution, and/or forfeiture that Ciupiak may be ordered to pay in the parallel criminal proceeding will be a significant factor in the SEC's determination of whether to press its demand for a civil penalty against Ciupiak in this case. (According to DOJ, that case is presently under seal as to Ciupiak.) DOJ advises that it currently expects a hearing on Ciupiak's restitution and forfeiture to occur in May or June 2023. Once those issues have been resolved, the SEC intends to assess whether it can seek a fully dispositive settlement with Ciupiak at that time. In the event that the criminal case against co-defendant Panther is further delayed beyond his current sentencing date (May 22, 2023), it will be necessary to assess whether the interests of justice would militate towards continuing to defer the issues as

to any civil penalty against Ciupiak.

III. Conclusion

We regret not being in a position to have moved this case along to conclusion or to propose a specific schedule to do so, but the final outcome of the criminal case will have such a major impact on the relief that the SEC will seek, that prudence suggests we await that outcome. We do wish to assure the Court that we have been diligent in our efforts to prosecute this case. We intend to continue to closely monitor the pace and progress of the parallel criminal action. We will promptly proceed with dispositive motions in this case once the criminal action is finally completed. In the meantime, we propose to submit a further Status Report to the Court on or before June 16, 2023.

Respectfully submitted,

Dated: April 13, 2023

/s/ Duane K. Thompson

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